

Defense Acquisition Regulations System (DARS)
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September 27, 2021

Re: Early Engagement Opportunity on Implementation of Executive Order 14042: Ensuring Adequate COVID Safety Protocols for Federal Contractors

To Whom It May Concern:

The Information Technology Industry Council (ITI)¹, on behalf of our member companies, sincerely appreciates the Department's efforts to efficiently implement the Safer Federal Workforce Task Force's guidance for COVID-19 safety protocols for federal contractors, pursuant to Executive Order (EO) 14042. After reviewing the guidance, we respectfully request that the Department of Defense address the following questions when implementing EO 14042's vaccine, masking, and distancing mandates for federal contractors:

1. We'd like to emphasize the desire for additional clarity around how broad the "federal contractor" term should be interpreted. While the Safer Federal Workforce Task Force Guidance FAQs provide examples of corporate-level HR, billing/payroll, and legal employees who work directly on the contract, those departments often work on a variety of areas and issues. There is a bit of a suggestion that the EO applies to all "operational" employees of the vendor in these cases, and we'd appreciate additional clarification. Stated another way, if the mandate for federal contractors is a condition of employment, not just a condition of coming to an office, how broadly within the contractor workforce will the mandate extend?
2. In reviewing the definitions for Covered Contractor, Covered Contractor Employee, and Covered Contractor Workplace respectively, it seems as though US employees of a Covered Contractor who are 100% remote from home and 100% dedicated to non-govt business (i.e. not working on or "in connection with" any federal contract) would be exempt from the vaccination requirement. We'd appreciate additional clarification to understand the available options. For example, if an employee refuses to be vaccinated for non-religious/non-medical reasons could that employee be re-assigned as 100% remote and 100% dedicated to non-government business activities?
3. We would appreciate additional clarity on which requirements are applicable to contractors who provide only products, not services. For example, if a contractor performs a mix of products

¹ **About ITI:** The Information Technology Industry Council (ITI) is the premier global advocate for technology, representing the world's most innovative companies. Founded in 1916, ITI is an international trade association with a team of professionals on four continents. We promote public policies and industry standards that advance competition and innovation worldwide. Our diverse membership and expert staff provide policymakers the broadest perspective and thought leadership from technology, hardware, software, services, and related industries. Visit www.itic.org to learn more.

and services contracts, must the contractor employees who work on the products-only contracts comply with vaccine requirements?

4. What type of attestation(s)/reporting will a covered contractor be required to provide the government to demonstrate compliance with vaccine requirements? Please provide additional clarity regarding how the contractor should obtain consent to disclose confirmation of vaccination status to a government agency. Per the EEOC, this is confidential medical information under the ADA, and state privacy laws may also be implicated. What level of information will the government request?
5. Will covered contractors have to provide information to government agencies regarding exception requests, including requests made by people with medical conditions and those with sincerely held religious beliefs? If so, what is the Task Force and/or procurement agencies' role in reviewing and/or approving requests?
6. How will the vaccine, masking, and distancing requirements be enforced, and what are the penalties for non-compliance?
7. How should companies deal with the costs of compliance that may ultimately raise prices to the U.S. Government and other customers?
8. What is the status of legal challenges to Executive Order 14042? Please provide additional clarity on how federal contractors should navigate conflicting state laws that prohibit mask/vaccine mandates.
9. What can be done to address the attrition risk for companies that anticipate significant resignations if a mandate is implemented, and the fact that such attrition may impact a company's ability to perform on its contractual obligations to the U.S. Government?
10. What is the prime contractor's responsibility for verifying that subcontractors are adhering to the mandate? How many tiers of subcontractors are subject to the prime's oversight?

We sincerely appreciate your consideration of and responses to our questions. For any additional feedback or questions regarding our response, please feel free to contact me at mpetersen@itic.org.

Very Respectfully,

Megan Petersen
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Information Technology Industry Council (ITI)